No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
02.	02.03.07	Present: Mr. Karma Thinlay, Central Government Standing Counsel for the Petitioners. Mr. A. Moulik, Sr. Advocate with Mr. N.G. Sherpa, Advocate for the Respondent. ... This is a Writ Petition by way of an L. Chandra Kumar appeal from an order of the Central Administrative Tribunal, Calcutta Bench (Circuit at Gangtok) dated 20.4.2006. By the said order the promotion of the Respondent Tek Man Sunar was confirmed. The Appellant raises a point before us that the promotion of Sunar was fortuitous and it occurred because, by mistake, his date of appointment was taken as 22.4.1983 instead of 22.4.1984, which is the correct date. The mistake was later corrected by the Review Committee. **2.** It does not appear that these points were at all urged before the Tribunal on behalf of the State because, apart from the mention of the word "fortuitous" there is nothing in the Tribunal's order to show that Sunar's promotion was being opposed. In fact the orders seems to suggest that the learned State Advocate J.M. Bhattacharjee, then appearing before the Central Administrative Tribunal, submitted that Sunar has been subsequently adjusted against a substantive post and the Tribunal passed ~~an~~ their order on that basis.	

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		3. Mr. Bhattacharjee is not appearing before us; however, change of counsel in no manner changes the case itself. **4.** If the matter had stood there, we would have had no hesitation in dismissing the Appeal, i.e. the Writ Petition of the Appellant. However, there is another point of great importance which appears to have escaped the attention of the parties so far. The contesting employee of Sunar was one T.C. Arya who was also asking for promotion. It was submitted by the Appellant that the post in Gangtok was only one, and for the purpose of accommodating Sunar, the post originally made for Patna was drawn upon at Gangtok by way of diversion of funds; just for accommodating Sunar. Be that as it may, Arya has never been heard. If the fund diversion from the other post is not to be done, and there is no reason why it should be done, either Arya or Sunar is to be promoted; both persons have a right of hearing and Arya has not been heard by the Court till now. **5.** On this single ground of absence of an essential and necessary party, the Appeal is allowed and the order of the CAT is set aside. The matter will be heard afresh by the Tribunal. However, although the order dated 20.4.2006 is being set aside, it will continue to operate until the Tribunal passes an order afresh and until that time the status quo with	A Copy of order forwarded to D.A. by CAT, Calcutta. dt 9/11/07

and so as to comply with the Tribunal's interim order,

this was done

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regard to Sunar as obtaining on date, on the basis of order dated 20.4.2006, shall continue. Addition of party application is to be filed, so as to implead Arya, by or on behalf of Sunar within one month hereof; if the Tribunal finds any delay in the impleadment of Arya or having the papers served on Arya to cause his appearance, the Tribunal will be entitled on that very ground to rescind the order of promotion now existing in favour of Sunar. However, much the better course is to pass a full and reasoned order after hearing the parties involved.

6. There will be no order as to costs.

(Ajoy Nath Ray, CJ)

(N.S. Singh, J.)